

Remarks

I. Status of the Application and Claims

As originally filed, the present application had a total of 16 claims. All of these original claims except for claims 13-16 were cancelled in a Preliminary Amendment filed by Applicant. In a previous response, Applicant also added new claims 17-22. Thus, the claims presently pending in the application are 13-22.

II. The Amendments

Claims 13 and 14 have been amended so that they now refer to measuring the expression of a protein or peptide rather than the expression of a "gene." This was done in order to maintain proper antecedent basis within the claims and is relevant to the present rejections made by the Examiner.

III. Entry of Previous Preliminary Amendments

Applicant wishes to thank the Examiner for entering the previously filed Preliminary Amendments and for making the present Office Action non-final.

The Rejections

I. Rejection of Claims Under 35 U.S.C. § 112, First Paragraph

On pages 2-4 of the present Office Action, the Examiner rejects claims 13-22 under 35 U.S.C. § 112, first paragraph. The Examiner's main argument seems to be that the claims are directed to determining the expression of a "gene" which is not adequately defined in the specification or claims.

Upon rereading the claims that were previously submitted, Applicant has noticed that the word "gene" was put in by error. The claims should actually refer to the expression of a peptide or a protein and, more specifically, the expression of the peptide or protein encoded by the DNA sequence recited in paragraph a)(iii) of claim 13. The particular protein or peptide used can be chosen for convenience, *e.g.*, a marker gene well known in the art might be selected whose expression could be easily determined. Since the claims no longer refer to a "gene," Applicant believes that the Examiner's rejection has been obviated, and it is respectfully requested that this rejection now be withdrawn.

II. Rejection of Claims Under 35 U.S.C. § 112, Second Paragraph

On pages 4 and 5 of the Office Action, the Examiner rejects claims under 35 U.S.C. § 112, second paragraph. The rejection appears to be closely related to the rejection that was made under 35 U.S.C. § 112, first paragraph.

Again, Applicant believes that the confusion that has arisen with regard to the meaning of "gene" is the result of a simple error on Applicant's part. Since the word "gene" has now been deleted from the claims and there is clear antecedent basis for the recitation of the "expression of said peptide or protein," Applicant believes that the Examiner's rejection has been overcome.

Conclusion

In light of the amendments and discussion above, Applicant believes that all of the Examiner's rejections have been overcome. It is therefore respectfully requested that these rejections be withdrawn and that the claims presently pending in the application be allowed.

If, in the opinion of the Examiner, a phone call may help to expedite the prosecution of this application, the Examiner is invited to call Applicant's undersigned attorney at (202) 419-7013.

Respectfully submitted,

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